IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

Nos. 79-603 and 79-742

UNITED STATES OF AMERICA,

Petitioner,

vs.

HOTEL CONQUISTADOR, INC., ET AL.,

Respondent.

BRIEF AMICUS CURIAE OF HARRIS TRUST AND SAVINGS BANK AND YOUNG MENS CHRISTIAN ASSOCIATION OF METROPOLITAN HARTFORD, INC.

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INDEX.

CITATIONS.

Cases.

Statutes and Regulations.

Miscellaneous.

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The Amici Curiae, both parties to similar litigation in the United States Court of Claims with respect to the same issue presented by the petitioner respectfully request that this court deny the petition of the United States of America (Government). If certiorari is granted, Amici submit the issue is one most appropriately resolved by summary affirmance.

OPINIONS BELOW.

The opinion of the Court of Claims as amended by the Order modifying its opinion is reported at 597 F. 2d 1348. The Government's motion for a rehearing *en banc* was denied by the seven active judges of the court.

JURISDICTION.

The judgment of the Court of Claims was entered on July 13, 1979. By order dated October 2, 1979, the Chief Justice extended the time within which to file for a writ of certiorari to and including November 10, 1979. The conditional cross-petition for a writ of certiorari was filed by Hotel Conquistador, Inc., et al. on October 1, 1979. The petition for a writ of certiorari was filed by the Government on November 8, 1979. The jurisdiction of this Court is invoked under 28 U. S. C. 1255(1).

QUESTIONS PRESENTED.

1. Stated by the Petitioner:

"Whether the value of meals furnished to employees on a daily basis is taxable as "wages" under the Federal Insurance Contributions Act and the Federal Unemployment Tax Act, and thereby includable in the benefits base under the old-age and benefits provisions of the Social Security Act."

2. Stated by the Respondent Conditional Cross-Petitioner:

a. *By the Petition:* "Whether meals furnished without charge to employees for the convenience of their employer, and therefore admittedly not "wages" subject to withholding for Federal income tax purposes, are nonetheless "wages" subject to Social Security (FICA) and Federal Unemployment Insurance (FUTA) taxes."

b. *By the Conditional Cross-Petition:* "Where the Government asserts that an item constitutes wages for Federal Insurance Contribution Act (FICA) tax purposes, whether an employer, who sues for a refund of the *employer portion* of such tax paid with respect to such item, must first either reimburse his employees for the *employee portion* of FICA tax withheld from them with respect to such item or take some

other steps to protect their interests in order to obtain refund of the employer portion."

STATUTES AND REGULATIONS INVOLVED.

The pertinent provisions of Sections 3101, 3102, 3111, 3121, 3301, 3306, 3401, and 3402 of the Internal Revenue Code of 1954 (26 U. S. C. (1971 ed.)) and of Treasury Regulations on Employment Tax, Sections 31.3121(a)-1, 31.3306(b)-1, and 31.3401(a)-1 (26 C. F. R.) are set forth in the Appendix, *infra,* at A1-A4.

STATEMENT.

1. Amici Curiae are both parties to litigation in the United States Court of Claims involving essentially the identical legal question presented by the petition for certiorari. Young Men's Christian Association of Metropolitan Hartford in *Young Men's Christian Association of Metropolitan Hartford, Inc.* v. *United States of America* (United States Court of Claims Docket No. 371-79T), seeks refund of FICA Social Security Taxes paid with respect to the value of meals and lodgings provided to resident summer camp staff. That action was brought as a test case on behalf of hundreds of YMCA summer camps nationwide. The Harris Trust and Savings Bank, in *Harris Trust and Savings Bank* v. *The United States* (United States Court of Claims Docket No. 105-79T), seeks refund of FICA and FUTA taxes paid with respect to the Bank's operation of a cafeteria for its employees and payments of supper money to its employees. In both instances, the taxes in question were paid by the employer after audit and assessment by the Internal Revenue Service. As in this case, the Service has not claimed that the value of the meals (or lodging) are subject to income tax withholding.

2. The petition of the United States seeks review of the decision below in *Hotel Conquistador, Inc.* v. *United States,* 597 F. 2d 1348 (Ct. Cl. July 13, 1979), in which the United

States Court of Claims found that the value of meals provided to employees for the convenience of the employer was not "wages" within either § 3121(a)* [FICA] or § 3306(b) [FUTA] and therefore the amounts paid by respondent as FICA and FUTA taxes in respect of such value were improperly collected.

3. Amici Curiae agree with the Respondent that the decision below was correctly decided and thus needs no review by this Court. However, in the event certiorari is granted, a final resolution of this matter by summary affirmance of the decision below is appropriate.

4. Amici Curiae do not address the issue presented in the conditional cross petition for certiorari.

SUMMARY OF REASONS FOR DENYING THE PETITION.

The decision below correctly holds that noncompensatory meals furnished to employees for the convenience of the employer are not "remuneration," and thus not "wages" for purposes of Federal Insurance Contributions Act and Federal Unemployment Tax Act withholding taxes. The court's finding was based upon this Court's recent decision that meal reimbursements are not wages for income tax withholding purposes. *Central Illinois Public Service Co.* v. *United States,* 435 U. S. 21 (1978).

The Government asserts here that noncompensatory meals in kind may nonetheless be "wages" upon which an employer must withhold for FICA and FUTA purposes. However, the basic meaning of "wages" is the same for all purposes. Congress borrowed the income tax withholding term wages from the Social Security term intending this unitary identity; and, the necessity for precision, simplicity and certainty of the employer's withholding tax responsibility itself requires that this

* All section references are to the Internal Revenue Code of 1954, Title 26 United States Code unless otherwise indicated.

identity be unitary. The confusion on this issue stems solely from the Government's continued assertion of meals as wages in spite of this Court's *Central Illinois* decision. Certiorari should thus be denied. However, if certiorari is granted, the issue is sufficiently clear that resolution by summary affirmance is appropriate.

ARGUMENT.

I.

MEALS AND MEAL REIMBURSEMENTS ARE NOT WAGES FOR PURPOSES OF FEDERAL INCOME TAX WITHHOLDING.

In *Central Illinois Public Service Co.* v. *United States,* 435 U. S. 21 (1978) this Court held that cash reimbursement paid during 1963 for meal expenses of employees were not "wages" within the meaning of Internal Revenue Code § 3401(a), 26 U. S. C. § 3401(a), to subject the employer to liability for federal income tax withholding upon such payments. The Government here seeks to have the Court determine that similar noncompensatory meals provided in kind to employees *are* nonetheless "wages" under §§ 3121(a) and 3306 of the Code for purposes of FICA and FUTA withholding.

Mr. Justice Blackmun's opinion for the Court, joined by the Chief Justice and Justices Brennan, White, Marshall, Powell, Rehnquist and Stevens, stated that if the definition of "wages" is to be expanded to include such items, Congressional action would be necessary:

> "This is not to say, of course, that the Congress may not subject lunch reimbursements to withholding if in its wisdom it chooses to do so by expanding the definition of wages for withholding. It has not done so as yet. And we cannot justify the Government's attempt to do so by judicial determination." *Central Illinois Public Service Co.,* 435 U. S. at 33.

Justice Stewart concurred in a separate opinion stating that the meal reimbursements were simply not wages within the meaning of the statute. 435 U. S. at 39.

Mr. Justice Powell, joined by the Chief Justice, indicated that "absent express statutory authority, to impose retroactively a tax with respect to years prior to the date on which taxpayers are clearly put on notice of the liability" would be an abuse of discretion. 435 U. S. at 38.

Mr. Justice Brennan, joined by the Chief Justice and Mr. Justice Powell filed a concurring opinion stating that retroactive application of federal withholding requirements would be an abuse of discretion but expressing no opinion whether prospective modification by regulation might be permissible. 435 U. S. at 33.

II.

THE BASIC MEANING OF "WAGES" IS THE SAME FOR ALL WITHHOLDING PURPOSES.

A. Congress Intended the Meaning of "Wages" to Be the Same for All Federal Employment Tax Purposes.

FICA (§ 3121(a)) and FUTA (§ 3306(b)) provisions both define "wages" as "all remuneration for employment . . ." and define "employment" in turn as "any service . . . performed . . . by an employee for the person employing him" (§§ 3121(b) and 3306(c)). For income tax withholding, § 3401(a) defines wages as "all remuneration . . . for services performed by an employee for his employer. . . ." The language of each provision, followed through, results in a near-identical definition.

The first withholding provision was enacted by the Social Security Act of 1935. 49 Stat. 622. Income tax withholding was proposed later by the Treasury and passed by the House as part of the Revenue Bill of 1942, H. R. 7378, 77th Cong. 2d Sess. but eliminated by the Senate. Instead, the Congress enacted a "temporary" withholding to apply only to the

"Victory Tax" enacted by the Revenue Act of 1942, 56 Stat. 798. The withholding became permanent and applicable to income tax withholding by the Current Tax Payment Act of 1943. 57 Stat. 126. As hereinafter set forth, the legislative history of both Acts shows that wages for income tax withholding purposes were intended to be identical with wages for Victory Tax withholding, which in turn were borrowed from and identical with wages for social security purposes.

i. Revenue Act of 1942.

As originally proposed by the Treasury and passed by the House of Representatives, the Revenue Bill of 1942 provided for withholding at the source upon "wages, salaries, corporation dividends and corporation bond interest." Revenue Bill of 1942, H. R. 7378, 77th Cong. 2d Sess., § 153. The House Ways and Means Committee clearly intended to employ a definition of "wages" of precisely the same coverage and exclusions as wages for social security purposes:

> "The term 'wages' as used in the supplement is defined in section 425(b). It includes all remuneration whether designated as salary, wages, fees, commissions, etc., and whether paid in cash or property, if paid for services performed by an employee for his employer. Remuneration received for certain types of services, however, is excepted and is not subject to withholding . . . *These exceptions are identical with the exceptions extended to such services for social security tax purposes and are intended to receive the same construction and have the same scope.*" (H. R. Rep. No. 2333, 77th Cong., 2d Sess. July 14, 1942 at 126) (emphasis added).

The Senate report contains identical language. S. Rep. No. 1631, 77th Congress, 2nd session, October 2, 1942 at 166. Throughout the legislative history, the House and Senate committees display an intention to

> "simplify the process of collection at the source and help to minimize the requirements for additional business machines by employers charged with the duty of collecting

and accounting for the tax." S. Rep. No. 1631, *supra*, at 171.

Such simplification resulted in part from adopting the identical definition of wages used for social security purposes.

In conference, the House Bill's provision for income tax withholding was deleted in favor of the Senate's Victory Tax provisions. An exclusion from "wages" was provided for fees to public officials, and the definition of employee, originally expanded, H. R. Rep. No. 2333, 77th Cong. 2nd Sess. at 128; S. Rep. No. 1631, 77th Cong. 2d Sess. at 167-168, was restored to the common law concept. H. R. Rep. No. 2586, 77th Cong. 2nd sess., October 19, 1942, amendments 241 and 242 at 55-56.

Consequently, for Victory Tax withholding purposes, the Revenue Act of 1942, 56 Stat. 798, October 21, 1942, adopted the definition of "wages" used in the Social Security Act, subject to all of the same exclusions.

ii. Current Tax Payment Act of 1943.

The Current Tax Payment Act of 1943, Act of June 9, 1943, 57 Stat. 126, § 1621 applied the withholding to income tax and made it permanent. The Congressional debate on withholding centered on which bill to follow in implementing a pay-as-you-go program of tax payment. Originally proposed by the Individual Income Tax Collection Act of 1943, H. R. 2218, 78th Cong., 1st Sess. § 465; the House Committee adopted the existing concept of "wages":

> *"The general definition of the term 'wages' contained in section 465(a) is the same as that contained in existing law.* The term is generally defined to include all remuneration whether designated as salary, wages, fees, commissions, etc., and whether paid in cash or property, if paid for services performed by an employee for his employer. Certain of the exceptions provided in the existing law with respect to remuneration paid for given types of services are contained in identical language." (H. R. Rep. No. 268, 78th Cong. 1st Sess., March 19, 1943, at 14.) (emphasis added)

That proposal was enacted as part of the bill passed as the Current Tax Payment Act of 1943, 57 Stat. 126. The Act carried over the initial bill's definition of wages for withholding purposes. H. R. Rep. No. 401, 78th Cong. 1st Sess., April 30, 1943 at 22. Although some clarifying language was felt necessary with respect to the exceptions, the definitions of "wages" was never changed.

In response to objections of employers not wishing to be conscripted as collection agents, the Senate clearly stated its intention to simplify the whole process by coordinating the income tax withholding structure with the existing Social Security tax structure.

> "Your committee bill adopts the basic system of collection at source as provided in the House bill but makes a number of technical changes which are explained below. *Under the bill as reported by your committee, the methods of collection, payment, and administration of the withholding tax have been coordinated generally with those applicable to the Social Security tax imposed on employees under section 1400 of the code. This proposal has been made in order to facilitate the work of both the Government and the employer in administering the withholding system.* Accordingly, section 2 of the bill places the 20 percent withholding provision in a new Subchapter D of chapter 9 of the code. The new subchapter is entitled 'Collection of Income Tax at Source on Wages.' This amendment requires a change in the numbering of the various sections discussed below." (S. Rep. No. 221, 78th Cong. 1st Sess., May 10, 1943, Detailed Discussion of the Technical Provisions of the Bill, at 17.) (emphasis added).

The Senate also re-emphasized the fact that the definition of "wages" had not changed:

> "Subchapter D under the bill as reported by your committee consists of sections 1621 to 1627, inclusive. Section 1621 provides definitions of the more important terms

> used in subchapter D. *The general term 'wages' contained in section 1621(a) is the same as that contained in the House bill and in section 465(a) of the code.* The term is generally defined to include all remuneration whether designated as salary, wages, fees, commissions, etc., and whether paid in cash or property, if paid for services performed by an employee for his employer. Certain of the exceptions provided in existing law with respect to remuneration paid for given types of services are continued in identical language." *Id.* at 17. (emphasis added).

In conference, the explicit coordination with the existing Social Security tax withholding provisions "in order to facilitate the work of both the government and the employer in administering the withholding system," prevailed:

> "The Senate bill adopts the basic system of collection at source as provided in the House bill but makes a number of technical changes which are explained below. Under the bill as passed by the Senate, the methods of collection, payment, and administration of the withholding tax were coordinated generally with those applicable to the Social Security tax imposed on employees under section 1400 of the code. This proposal was made in order to facilitate the work of both the Government and the employer in administering the withholding system." (Conference Report, Current Tax Payment Act of 1943 H. R. Rep. No. 510, 78th Cong. 1st Sess., May 28, 1943 at 28.)

Further supporting the unitary concept of "wages" is the conference committee's rejection of the House bill's computation manner (requiring different rates to be applied to different portions of wages) in favor of the Senate bill's single bracket single percentage withholding

> "so framed that the employer will not be required to make two separate computations and add the result of each in order to arrive at the amount of tax required to be withheld from any one employee." (Conference Report, H.R. Rep. No. 510, 78th Cong., 1st Sess., May 28, 1943 at 33.)

Any suggestion that "wages" would differ from Social Security to income tax withholding, requiring multiple computations of

wages for different purposes, would certainly also have been rejected.

The Court's decision in *Central Illinois* that meal reimbursements are not wages for income tax purposes necessarily means that they cannot be wages for FICA and FUTA purposes. Although Congress has modified the statutory exclusions from wages from time to time, and always prospectively,[1] the basic definition of wages has never changed. In enacting the Victory Tax and subsequent income tax withholding provisions, the one certainty was that "wages" has the same meaning. This Court's decision that the term "wages" borrowed for the later income tax withholding does not cover meals provided for the employer's convenience, means the source term "wages" for FICA and FUTA withholding cannot include such items.

iii. Lower Court acceptance of unitary "wages".

Including the decision below, the three courts which have decided the issue squarely,[2] before and after *Central Illinois*, have explicitly held the "wages" definitions for FICA, FUTA and income tax withholding to be identical. In *Royster Co.* v. *United States*, 479 F. 2d 387 (4th Cir. 1973), the Court of Appeals held that meal reimbursements the taxpayer paid its salesmen for their meal expenses while on the road were *not* wages for FICA, FUTA *or* income tax withholding purposes.

> "The district court was properly of opinion that the slight variations in the wording of the above statutes were inconsequential and that wages has the same essential meaning under all the statutes here in question. The government in its brief agrees with this determination. Thus, the case turns not upon any factual dispute but upon a reading of the pertinent statutes and the meaning to be given the term 'wages.'" (*Royster Co.*, 479 F. 2d at 390.)

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1. See Justice Brennan's concurring opinion in *Central Illinois, supra,* 435 U. S. at 35, n. 4.

2. Contrary to the Government's claim that a conflict exists among circuits with respect to the issue presented by the petition,

(Footnote continued on next page.)

Following *Central Illinois,* the District Court in *Oscar Mayer & Co.* v. *United States,* unreported decision, 79-2 U. S. T. C. ¶ 9572 (W. D. Wis. March 22, 1979) granted summary judgment, holding personal use of company cars was not "wages" for purposes of FICA, FUTA or income tax withholding, emphasizing the unitary nature of "wages":

> "To hold that the slight differences in the wording of the definitions of wages constitutes a difference in intent would prevent employers from being able accurately to predict what should be withheld for income tax purposes and what should be withheld for FICA and FUTA purposes. Such a result would be unfair. Therefore, this Court holds that the slight variations in the statutes are inconsequential and the word "wages" has the same essential meaning under all the statutes here in question. In reaching this decision, the Court is in agreement with the finding of the Fourth Circuit in *Royster Company* v. *United States,* 479 F.2d 387 (4th Cir. 1973)." (*Oscar Mayer & Co.* v. *United States,* 79-2 U. S. T. C. at 88,084.

B. The Necessity for Precision, Simplicity and Certainty of the Employer's Withholding Tax Responsibility Requires That the Definition of Wages Be Identical for All Purposes.

Congress obviously thought it had a sure, simple definition of wages in the Social Security Act to avoid uncertainty over its coverage. In *Social Security Board* v. *Nierotko,* 327 U. S. 358 (1946), this Court stated the Congressional determination of the need for simplicity and certainty in determining wages for withholding purposes:

(Footnote continued from preceding page.)
courts have found meals or lodging to be wages for FICA and FUTA withholding *only in cases where the court found the benefits were, as a matter of fact, furnished as compensation* (i.e., not for the convenience of the employer. *See S. S. Kresge Co.* v. *United States,* 379 F. 2d 309 (6th Cir. 1967); *Pacific American Fisheries, Inc.* v. *United States,* 138 F. 2d 464 (9th Cir. 1943) and *Goldsboro Christian Schools, Inc.* v. *United States,* unreported decision, 79-1 U. S. T. C. ¶ 9266 (E. D. N. C. 1978). However, that is not the issue presented by this case or those involving Amici.

> "Congress might have delegated to the Social Security Board to determine what compensation paid by employers to employees should be treated as wages. Except as such interpretative power may be included in the agencies' administrative functions, Congress did neither. An agency may not finally decide the limits of its statutory power. [That] is a judicial function. Congress used a well understood word—'wages'—to indicate the receipts which were to govern taxes and benefits under the Social Security Act." (327 U.S. at 369.)

All of the Justices in *Central Illinois* similarly believed the employer must have unambiguous notice of what it is he is to withhold upon. As Mr. Justice Blackmun stated:

> ". . . Congress chose simplicity, ease of administration, and confinement to wages as the standard in 1942. This was a standard that was intentionally narrow and precise. It has not been changed by Congress since 1942, although, of course, as is often the case, administrative and other pressures seek to soften and stretch the definition. Because the employer is in a secondary position as to liability for any tax of the employee, it is a matter of obvious concern that, absent further specific Congressional action, the employer's obligation to withhold be precise and not speculative." 435 U. S. at 31.

Having decided that income tax withholding "wages" do not include such amounts for meal reimbursements, any departure for FICA and FUTA purposes would impose not merely an unintended burden upon employers, from the smallest to the largest, but a burden Congress specifically sought to avoid. Departure from the identity of meaning of wages for all three taxes could require each employer to calculate three amounts of wages for federal income tax withholding purposes, FICA purposes, and FUTA purposes differently for each employee. Such distinctions would require a close scrutiny of each particular item paid in cash or in kind in order to categorize each item as "wages" for each of the withholding categories. The result would be to subject employers not only to time consuming

work, but also to the risks of treacherous grey areas of judgment calls. Employers having guessed wrong will wind up directly bearing each tax rather than simply acting as a collection conduit for the United States, "a result certainly not intended by Congress." *Central Illinois, supra,* 435 U. S. at 38 (concurring opinion of Justice Brennan).

The Government's census of the numerous cases pending on this issue,[3] overlooks the essential nature of all of these cases, involving after-the-fact Internal Revenue Service assertions of underwithholding by employers for "benefits" not thought to be wages, many of which would involve difficult questions of valuation and record-keeping. Neither of the Amici regarded the facilities provided as includible wages, but paid the taxes in question only upon the government's assertion that the facilities were wages. A requirement that the employer value the meals provided in cash or in kind to each employee will have an extraordinarily burdensome effect not present in this case. *Amicus curiae* Harris Trust and Savings Bank would be required to value and keep substantial records of each employee's particular benefit from each such employee's usage of a cafeteria subsidized by the employer for the employer's own convenience. Most employers currently monitor such usage only to limit access to employees. Any requirement that each employee's usage be measured and valued would produce record keeping costs substantially nullifying any employer convenience from providing such facilities.

Moreover, the fashion employed by the Internal Revenue Service in computing the employment taxes in many of the cases is to assess additional tax against the employer based on a hypothesized aggregate value of "benefits" provided without allocation of any of the "wages" to any individual employees. The result is precisely the imposition of a tax solely upon the employer without correspondingly increasing the "wages" for any employee in computing his social security or unemployment

3. Petition at 9.

benefits Congress sought to provide him by the Social Security Act for his retirement or termination.

For *amicus curiae* Young Men's Christian Association (YMCA) of Metropolitan Hartford, Inc., on behalf of hundreds of YMCA summer camps all over the nation, the imposition of a withholding requirement with respect to the value of meals and lodging required to be accepted by camp counselors as a condition of their employment produces an equally substantial valuation burden. The valuation of required meals and lodging in such instances imposes a serious burden not only upon large employers but onerous questions of speculative valuation for great numbers of small employers.

For many employers, *Amici* suggest the adoption of the Government's position will encourage not the implementation of onerous and expensive record-keeping procedures, but rather the elimination of the facilities sought to be taxed.

Any current confusion in the exclusion of such noncompensatory meals and lodging from wages stems solely from the Government's recent assertion of a multiplicity in the definition of wages, in spite of a clearly contrary legislative history, and this Court's explicit decision in *Central Illinois.*

III.

MEALS PROVIDED FOR THE EMPLOYER'S CONVENIENCE ARE NOT REMUNERATION, AND THUS CANNOT BE TAXABLE WAGES FOR PURPOSES OF EITHER WITHHOLDING TAX LIABILITY OR COMPUTATION OF BENEFITS UNDER FICA AND FUTA.

The court below correctly held meals provided primarily for the employer's convenience are not "remuneration" and so cannot be "wages" for any of the withholding tax provisions. *Hotel Conquistador, supra,* 597 F. 2d at 1350. The term wages has consistently from the beginning "meant remuneration *'if* paid for services performed by an employee for his employer.' " *Central Illinois, supra,* 435 U. S. at 27. Remuneration is the

basic condition and key to producing wages under all three statutes. As long as the employer is not seeking to *compensate* the employee but is rather providing a facility for the employer's own purposes, the entire concept of remuneration does not exist with respect to such facilities[4] and the item is not wages.

CONCLUSION.

The decision below was correct and needs no review. The uncertainty the Government alleges in the definition of wages for purposes of income tax, FICA and FUTA withholding was never intended by Congress.

However, in the event certiorari is granted, it would appear that a summary affirmance would be the best way to dispose of this issue in light of this Court's decision in *Central Illinois*, Congress' intent that wages be unitary, and the employer's need for the employment tax liability to be simple, precise and certain.

WHEREFORE, the *Amici Curiae* respectfully submit that the Court should deny the petition for certiorari.

Respectfully submitted,

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4. There is of course no reason why noncompensatory amounts should increase the amount of "wages" for purposes of Social Security and unemployment benefits by increasing the amount of "wages" credited to an employee's account. Congress thus determined that the "*remuneration* for employment," (wages) should determine the amount of Social Security and unemployment benefits. 49 Stat. 636 §§ 215 and 209, 42 U. S. C. §§ 415 and 409 (1979 Supp.).

APPENDIX.

Internal Revenue Code of 1954 (26 U. S. C.) (1971):

SECTION 3101. RATE OF TAX.

(a) *Old-Age, Survivors, and Disability Insurance*—
In addition to other taxes, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

* * * * *

(b) *Hospital Insurance*—In addition to the tax imposed by the preceding subsection, there is hereby imposed on the income of every individual a tax equal to the following percentages of the wages (as defined in section 3121(a)) received by him with respect to employment (as defined in section 3121(b))—

* * * * *

SECTION 3102. DEDUCTION OF TAX FROM WAGES.

(a) *Requirement*—The tax imposed by section 3101 shall be collected by the employer of the taxpayer, by deducting the amount of the tax from the wages as and when paid. . . .

* * * * *

SECTION 3111. RATE OF TAX.

(a) *Old-Age, Surviviors, and Disability Insurance*—
In addition to other taxes, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a))

paid by him with respect to employment (as defined in section 3121(b))—

* * * * *

(b) *Hospital Insurance*—In addition to the tax imposed by the preceding subsection, there is hereby imposed on every employer an excise tax, with respect to having individuals in his employ, equal to the following percentages of the wages (as defined in section 3121(a)) paid by him with respect to employment (as defined in section 3121 (b))—

* * * * *

SECTION 3121. DEFINITIONS.

(a) *Wages*—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; . . .

* * * * *

SECTION 3301. RATE OF TAX.

There is hereby imposed on every employer (as defined in section 3306(a)) for the calendar year 1970 and each calendar year thereafter an excise tax, with respect to having individuals in his employ, equal to 3.2 percent of the total wages (as defined in section 3306(b)) paid by him during the calendar year with respect to employment (as defined in section 3306(c)).

* * * * *

SECTION 3306. DEFINITIONS.

(b) *Wages*—For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration paid in any medium other than cash; . . .

* * * * *

SECTION 3401. DEFINITIONS.

(a) *Wages*—For purposes of this chapter, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for his employer, including the cash value of all remuneration paid in any medium other than cash; . . .

SECTION 3402. INCOME TAX COLLECTED AT SOURCE.

(a) *Requirement of Withholding*—Every employer making payment of wages shall deduct and withhold upon such wages (except as otherwise provided in this section) a tax determined in accordance with the following tables . . .

* * * * *

Treasury Regulations on Employment Tax (1954 Code) (26 C. F. R.) (1971):

§ 31.3121(a)-1 *Wages.*

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

* * * * *

§ 31.3306(b)-1 *Wages.*

(f) Ordinarily, facilities or privileges (such as entertainment, medical services, or so-called "courtesy" discounts on purchases), furnished or offered by an employer to his employees generally, are not considered as remuneration for employment if such facilities or privileges are of relatively small value and are offered or furnished by the employer merely as a means of promoting the health, good will, contentment, or efficiency of his employees. The term "facilities or privileges", however, does not ordinarily include the value of meals or lodging furnished, for example, to restaurant or hotel employees, or to seamen or other employees aboard vessels, since generally these items constitute an appreciable part of the total remuneration of such employees.

* * * * *

§ 31.3401(a)-1 *Wages.*

(b) *Certain specific items—*

* * * * *

(9) *Value of meals and lodging*—The value of any meals or lodging furnished to an employee by his employer is not subject to withholding if the value of the meals or lodging is excludable from the gross income of the employee. See § 1.119-1 of this chapter (Income Tax Regulations).

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